

CRA Report on the impact of removing the Ban on Acquisition-only Tariffs

Prepared for

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11 June 2024

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1. INTRODUCTION AND SUMMARY

1.1. Purpose of this report

1. So Energy has retained CRA UK International Ltd (“CRA”) to comment on Ofgem’s minded-to position to remove the Ban on Acquisition-only Tariffs (“BAT”) from 1st October 2024 as set out in the Statutory Consultation published on the 14th May.¹ In particular, we have been asked to produce an independent opinion on the value of the BAT, on the basis of tangible economic arguments of consumer detriment as well as the experience of other regulated industries.

1.2. Structure of this report

2. Our report is structured as follows:
 - In **Chapter 2**, we draw out elements of historical context of the BAT to inform the current debate. In particular, we are interested whether rationales presented, and conditions analysed as part of those decisions have relevance in today’s discussion. We also draw comparison with regulation of other industries.
 - In **Chapter 3**, we evaluate arguments that removing the BAT will have deleterious effects on consumer welfare. We do not address issues as to whether the BAT continues to have benefits for market stability.
 - In **Chapter 4**, we review the underlying economic theory behind price discrimination and show that, as a profit maximisation strategy, is likely detrimental to consumers – specifically those who are identified by firms as being less likely to switch. Furthermore, unless controlled it is likely (as in the past) to become the dominant pricing strategy. We also present a stylised economic model which illustrates numerically how this detriment arises.

1.3. Summary conclusions

- Acquisition-only tariffs (sometimes known colloquially as “Tease and Squeeze” tariffs) are a form of price discrimination whereby an attractive offer is made only to certain customers, in this case new customers.
- Prior regulatory discussions in the retail energy sector as well as in other industries have commonly identified harmful effects from such price discrimination. The costs of such “Tease and Squeeze” offers falls either on those customers remaining loyal to suppliers at the end of their initial tariff and/or on other loyal customers’ tariffs.

¹ Ofgem, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, p. 1.

- Acquisition-only tariffs are a damaging and unsustainable form of price competition. They are not driving competition around tariffs which differentiate on cost to serve, product and/or service. Instead, they are made possible by higher prices on other more loyal, “sticky” customer classes. In Great Britain (“GB”), these sticky customers have a higher propensity to be vulnerable or disadvantaged. In effect such Tease and Squeeze tactics result in robbing Peter to pay Paul.
- Ofgem is minded to remove the BAT as it considers the existing Default Tariff Cap (“DTC”) as providing protection against any consumer detriment from the “Tease and Squeeze”.² This, however, cannot be completely true. Were it so, Ofgem would be satisfied with a situation in which all tariffs are priced at the DTC. This is not the case as Ofgem continues to promote switching despite the DTC being in place. With fixed tariffs now returning to the market post the energy crisis, there is the opportunity for consumers to once again access tariffs below the cap. Price discrimination through the removal of the BAT will afford this opportunity exclusively to new customers, penalising existing customers through cross-subsidisation of those acquisition-only tariffs.
- Ofgem believes removing the BAT will also increase the diversity of tariffs available and promote switching.³ Despite the BAT, fixed tariffs have, however, after an absence during the energy crisis, returned to the market. Switching has once again begun to rise along with consumer polling suggesting an increased interest in re-engaging in the market.⁴
- The lack of competing fixed price tariffs in the market over the past few years is not a symptom of the BAT. Rather, forward market prices relative to the rapidly declining price cap since the energy crisis have increased the risk to suppliers from offering them. Now that forward prices have stabilised, we would expect greater opportunity to offer fixed price contracts. Ofgem should allow for a longer time period during which to analyse data where the BAT operates under more “normal” market conditions (and in absence of the market stabilisation charge (“MSC”)) to properly assess the impact of the BAT on available tariffs.
- Economic theory, and precedence over the last decade, suggests that price discrimination without some form of price control would return to the retail market. The market remains characterised by a significant number of sufficiently sticky customers, who are willing to remain with a supplier despite price increases. This affords suppliers with an ability to price discriminate without sacrificing profit margins (which otherwise would suffer from discounts offered in acquisition-only tariffs). This practice does not drive operational efficiencies or tariff innovation.

² Ofgem, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, p. 28.

³ Ofgem, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para. 3.6., p. 31.

⁴ Ofgem report, ‘Consumer Impacts of Market Conditions Survey’.

- Ofgem assumes that it would (despite historical evidence to the contrary) and this thinking is flawed in our opinion:
 - Given a choice, a supplier, as a rational economic actor, will choose price differentiation before sacrificing margin.
 - Given a choice, a supplier, as a rational economic actor, will choose price differentiation before investing in efficiency.
- Our modelling of a hypothetical supplier illustrates – given the stickiness of existing customers – that negative consumer detriment would result from price discrimination. We show under a reasonable range of assumptions that this could be as much as £11-74/customer on certain types of non-acquisition-only tariffs for more loyal customers annual bills. In all scenarios, we see existing customers paying more than they would have done with the BAT in place.
- We find that a negative detriment to customers would occur under a variety of pricing scenarios. Specifically, we find that, even when suppliers price their SVTs at the DTC, consumers face a detriment. This is because, firstly, without acquisition-only tariffs, suppliers would likely begin offering tariffs below the DTC (as they used to prior to the energy crisis and as we understand some suppliers are already doing again). Further, suppliers have other offers on the markets available to recoup lost margins from, including fixed tariff retention offers.

2. CONTEXT

3. Whilst the current BAT has been in place since 2022, a BAT was also implemented in 2013 and subsequently removed in 2016. In this section, we draw out elements of this historical context to inform the current debate on acquisition-only tariffs. In particular, we are interested in whether rationales presented, and conditions analysed as part of those decisions have relevance in today's discussion. We also draw comparisons with the regulation of other industries.
4. We also illustrate that on various occasions, Ofgem has noted the negative effects that can arise from price discrimination in retail energy markets. This, however, has been offset with a focus on the encouragement of switching.⁵

2.1. Managing for price discrimination

5. Ofgem has on various occasions considered the risk of price discrimination. In particular, Ofgem has concerned itself with suppliers being able to take advantage of sticky customers through price discrimination.
6. In the 2008 Supply Probe, for example, Ofgem remarked that low-cost discount tariffs often were built on the presumption by firms that lost profit in the short-term could be recovered from said-same customers over the long-term:

*Suppliers compete vigorously in the online market with heavily discounted offers, the cheapest of which may be, initially at least, below cost. This enables the companies to secure the leading places in price comparison tables. **The relevant suppliers told us that customers acquired online are profitable over a number of years as prices are subsequently increased.** We are concerned that the temporary nature of these offers is not transparent to consumers. Equally, this may not be obvious to potential competitors who may, as a result, be deterred from entry into this most price sensitive part of the market.*⁶

7. In addition to short-term tariff discounts being potentially offset over the long-term, Ofgem concluded that a feature of contemporary supplier business strategies was the willingness of companies to cross subsidise new customers with loyal existing customers:

*Overall, these price differentials mean that **companies charge more to existing ("sticky") customers whilst maintaining competitiveness in more price sensitive segments of the market.** The ability to price differentially in this way means that pressure on prices in the most competitive segments of the market does not always constrain prices for all other consumers. There is evidence in the companies' business plans and from interviews with the Big 6 that they are aware of these dynamics and take them into account in their pricing decisions.*⁷

8. Importantly, Ofgem recognised that the existence of switching behaviour in one cadre of customers was insufficient to necessarily generate benefits across the whole marketplace.

⁵ We note that Ofgem's focus has predominantly been on external switching (changing of suppliers by customers) as a measure of effective engagement by customers. In this report, unless stated, we refer to switching as external switching.

⁶ [Ofgem, 'Energy Supply Probe – Summary of initial findings and remedies', October 2008](#), para. 1.17., emphasis added

⁷ Ibid para. 1.18. Emphasis added.

We will address this argument further in Section 3.1. As a result, Ofgem introduced new conditions into the licences of suppliers to address the “widespread overcharging of certain groups of customers”, for the benefit of more vulnerable customers.⁸ However, there was an allowance – if suitable transparency was provided for initial time limited offers.⁹

9. Ofgem confirmed this feature of price discrimination again in the 2010 Retail Market Review (“RMR”):

Segmentation of customers may permit suppliers to make higher margins from sticky customers. This, combined with large incumbent market shares, may confer an advantage to the Big 6 [], raising barriers to entry to the energy retail market;¹⁰

10. Throughout the RMR, Ofgem collected a range of evidence, for example through customer engagement surveys¹¹ and found that:

*The presence of a large number of sticky consumers in incumbent suppliers’ customer base decreases the level of competition. While it limits the scope for independent suppliers to attract new customers, it also allows the incumbent suppliers to segment their customer base. In this way they can make higher margins from sticky customers. Further, the overall commercial discipline to provide good customer service is diluted. The evidence we have gathered during our RMR analysis shows that the large suppliers do earn a higher margin from sticky customers than active customers.*¹²

11. Numerous tariffs provide options for consumers, however the RMR raised the issue of having too many tariffs available on the market and the opposing, detrimental impact it can have on consumers.

12. Increasing the number of tariffs does not directly correspond with an increasingly effective market for consumers; and Ofgem stated that having too many available tariffs

*does not constitute effective choice for consumers.*¹³

13. Further, Ofgem found that suppliers used the number of tariffs (which included acquisition-only tariffs) to segment the market, including their ability to offer extensive and confusing tariff options.

*Large numbers of tariffs also allow suppliers to segment the market. [...] this mean[s] that some consumers may pay significantly more than others.*¹⁴

14. At the time, therefore, Ofgem recognised that a variety of tariffs might have been desirable in some circumstances but this was not a uniform or even necessary feature of effective

8 Ofgem, ‘Update on Probe Monitoring: tariff differentials and consumer switching’, July 2010, p. 1.

9 Ofgem, ‘Addressing undue discrimination – final proposals’, April 2009, para. 3.27, p. 12

10 Ofgem, ‘The Retail Market Review – Findings and initial proposals’, March 2011, para. 1.3., p. 5

11 Ofgem, ‘The Retail Market Review – Final domestic proposals’, March 2013, see references to Ipsos MORI survey.

12 Ofgem, ‘The Retail Market Review – Final domestic proposals’, March 2013, para. 1.32., p. 19

13 Ofgem, ‘The Retail Market Review – Final domestic proposals’, March 2013, p. 9. Emphasis added.

14 Ofgem, ‘The Retail Market Review – Final domestic proposals’, March 2013, para. 2.32., p. 40. Emphasis added.

competition. As a result, various restrictions were imposed which included, alongside a limit on the number of tariffs:¹⁵

- The predecessor to the BAT: a requirement that all tariffs be available to new and existing customers; and
- The restrictions on discounts that prohibited one-off discounts – which could be used to prompt/encourage customers to switch. Any discounts had to be offered to customers on all tariffs and could only relate to dual fuel, online or dividend discounts.

2.2. Focus instead on encouraging switching

15. As a result of the Energy Market Investigation (“EMI”), the Competition and Markets Authority (“CMA”) unwound the prohibitions introduced in 2016 which restricted the ability to offer acquisition-only tariffs and other forms of price discrimination. The CMA wanted to¹⁶

*help to reinvigorate competition, by allowing suppliers to introduce the sorts of incentives and discounts to retain and acquire customers that will allow them to increase engagement.*¹⁷

16. The CMA found that the prohibition had raised the cost to suppliers of offering discounted tariffs aimed at encouraging the customers of rival suppliers to switch. Consistent with the allowance under the 2008 Supply Probe, the CMA felt the requirements on tariff transparency, which meant all suppliers needed to communicate their cheapest tariff to all existing customers, would be sufficient protection.¹⁸

2.3. In 2022, the BAT was reintroduced as a market stabilisation tool

17. Since the conclusion of the EMI and the removal of the predecessor to the BAT (and the other ‘Simpler energy tariffs’ measures introduced in 2014), it isn’t clear that the CMA’s goals were achieved in terms of increased innovation and competition in the market.
18. In 2021, Ofgem ran a consultation process in which it highlighted the benefits of the BAT. At the time, Ofgem outlined that not only does the BAT serve to limit price discrimination but also has “potential wider consumer benefits”.¹⁹ The example given of such wider benefits included consumers sav[ing] money by staying with their supplier, likely leading to higher levels of switching (accounting for internal and external switching) than otherwise amongst inactive consumers when prices fall.²⁰

15 CMA, Energy Market Investigation, Appendix 11.1, para. 37., pp. 11-12.

16 CMA, Energy Market Investigation, Appendix 11.1, para. 37., p. 11.

17 CMA, Energy Market Investigation, para. 11.109., p. 662.

18 CMA, Energy Market Investigation, para. 13.

19 Ofgem consultation, ‘Statutory Consultation on potential short-term interventions to address the risks to consumers from market volatility’, December 2021, para. 3.20, p.20

20 Ofgem consultation, ‘Statutory Consultation on potential short-term interventions to address the risks to consumers from market volatility’, December 2021, para. 3.20, p.20

19. Ofgem re-introduced a BAT in 2022 as a “temporary measure” to “address the impacts of the unprecedented and unexpected rise in gas and electricity prices since Autumn 2021, which has put energy markets under severe strain”.²¹
20. As was made clear at the time, its primary intended role was to “help to stabilise the market in the short term by acting as a break on unsustainable price competition when cheaper tariffs return and customer switching picks up again”.²²
21. Despite market stabilisation being the primary intended role, the BAT also likely played a role in limiting price discrimination. Ofgem stated that:²³

It will also limit price discrimination by suppliers and help to improve consumer trust and confidence in the retail market after the challenges of this winter, improving access to cheaper tariffs for consumers who may be less willing or able to switch supplier, particularly those in vulnerable situations.

2.4. Latest decision

22. Whilst Ofgem has highlighted the intended temporary nature of the BAT, it announced in early 2024 that the regulation would be extended for another six months to a year.²⁴ Ofgem outlined that the removal of the BAT was delayed relative to the original plan, to reduce the associated risks due to the recent removal of the MSC, in combination with “the residual level of uncertainty in the market” following the crisis.²⁵
23. At the time, Ofgem stated that a further benefit to delaying the removal was to allow for time to further analyse the impacts of the BAT without the MSC in place.²⁶ However, Ofgem has not allowed for such time to perform meaningful analysis of the impact of the BAT without the MSC.
24. Further, Ofgem outlined that another area of analysis during the period will be to consider the implementation of the “BAT if options to remove or replace the cap are being considered”.²⁷ In this, Ofgem is proposing the BAT and the DTC as substitutes.
25. In May 2024, Ofgem published the statutory consultation stating its minded-to position to remove the BAT on 1st October 2024. Ofgem outlined that it does not believe the BAT has demonstrated potential long-term benefits during the time it has been implemented to justify it remaining in place and rather, has:

21 Ofgem decision, ‘Decision on short-term interventions to address risks to consumers from market volatility’, p. 17.; Ofgem, ‘Consultation on extending short-term interventions and adjusting MSC calculation’, p. 1.

22 Ofgem, ‘Short term interventions decision document’, February 2022, p. 5

23 Ofgem, ‘Short term interventions decision document’, February 2022, p. 5

24 Ofgem written statement, ‘Future of the Ban on Acquisition-only Tariffs, and associated market-wide derogation, post-March 2024’, February 2024, p. 4

25 Ofgem written statement, ‘Future of the Ban on Acquisition-only Tariffs, and associated market-wide derogation, post-March 2024’, February 2024, p. 4

26 Ofgem written statement, ‘Future of the Ban on Acquisition-only Tariffs, and associated market-wide derogation, post-March 2024’, February 2024, p. 4

27 Ofgem written statement, ‘Future of the Ban on Acquisition-only Tariffs, and associated market-wide derogation, post-March 2024’, February 2024, p. 4

Fulfilled its initial purpose as a temporary market stability measure.

26. Ofgem continues that it does not believe,
- there is a compelling reason for [the BAT] to be retained, whether for market stability or price protection reasons.*
27. As part of the Statutory Consultation Ofgem qualitatively presented the results of its impact assessment where it finds that in three out of four scenarios modelled, the efficiency benefit of removing the BAT is positive. We show that this result arises as Ofgem assumes market participants are willing to give up profit margins to compete on price, and that no detriment exists at the DTC. We will discuss this and the above contention on substitutability in Section 49.
28. Ofgem cites research it conducted through the Consumer Impacts of the Market Survey in 2022-2024 as further justification that they “disengaged customers are not particularly more or less likely to switch with the BAT in place as without it. Their behaviour has not changed markedly during the time that the BAT has been introduced and in place”²⁸, summarising that the BAT does not effectively address the loyalty penalty.²⁹ We analyse this hypothesis in Section 3.3.
29. Therefore, despite having recognised the benefits of the BAT, Ofgem nevertheless is minded to remove it on 1st October 2024 due to lack of evidence for such benefits in a market where the cap is in place.³⁰ In 2022, Ofgem’s intention was to:³¹
- undertake a full evaluation of the impact of this measure on consumers and competition. This will help inform future consideration of whether to implement the measure on an enduring basis. We would consult on any such proposal.*
30. At the time of this report, such a full evaluation has not been published for consultation.

2.5. Evidence from other industries

31. In Chapters 3 and 4 we explain how detriment arises from price discrimination. In particular, we argue that absent a BAT, the behaviour is likely to reoccur. In part, we draw this conclusion from experience of other industries.
32. Firms’ abilities to price discriminate using acquisition-only tariffs is not solely a characteristic of the energy supply sector. Acquisition-only tariffs, as shown in previous sections, give rise to loyalty penalties. These have been found in other industries also, to be detrimental to consumers.
33. In 2018, Citizens Advice submitted a super-complaint to the CMA which highlighted and addressed the pertinence of the loyalty penalty across 5 industries; insurance, mobile,

28 Ofgem consultation, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para. 3.14., p. 33.

29 Ofgem consultation, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para. 2.40, p. 24.

30 Ofgem consultation, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, p. 1.

31 Ofgem, Decision on extending short-term interventions and adjusting MSC calculation, August 2022, para. 5.19, p. 40.

broadband, savings, and mortgages. A total of approximately 10,000 consumers in total were surveyed.³² The CMA found in its response to the complaint that across all industries:

- A proportion of the consumer base was paying the loyalty penalty, “there is likely to be a substantial loyalty penalty paid by consumers each year”.³³ It also highlighted that impacts on consumers “is also likely to arise in many other markets where services are automatically renewed or rolled over”.³⁴
- Vulnerable consumers were disproportionately impacted by the loyalty penalty, (identified in the super-complaint as those who “aren’t digitally literate or don’t have access to the internet”) stating “while some very active consumers are getting cheap deals, many others are losing out. Some think that staying “loyal” will pay off, do not realise that they are paying much more...”.³⁵ The CMA continued that “tackling these problems head on is overdue” and that previous, and continued, efforts by regulators “have not made sufficient progress” concluding that there “is a clear case for intervention to protect those who are hardest hit, particularly those who are vulnerable”.³⁶

34. As a result of its findings, the CMA outlined recommendations for addressing the loyalty penalty stated the need for “stopping harmful business practices” and “protecting customers from harm, particularly vulnerable customers”.³⁷ It highlighted specifically the need to “consider targeted pricing regulations – such as limiting price differentials, or price caps – alongside other measures where there is clear harm, particularly to protect vulnerable customers”.³⁸ In the Appendix to this document, we show that while action has been taken by some industry regulators (through bans on acquisition-only tariffs) customers continue to view loyalty as important to be rewarded. In fact, their trust in the market relies on rewards being in the right place – with loyalty, not engagement.

32 Citizens Advice, *‘Excessive prices for disengaged consumers - A super-complaint to the Competition and Markets Authority’*, September 2018, p.7

33 CMA, “Tackling the loyalty penalty”, December 2018, p. 137

34 CMA, “Tackling the loyalty penalty”, December 2018, p. 137

35 CMA, “Tackling the loyalty penalty”, December 2018, p. 137

36 CMA, “Tackling the loyalty penalty”, December 2018, p. 137

37 CMA, “Tackling the loyalty penalty”, December 2018, p. 138

38 CMA, “Tackling the loyalty penalty”, December 2018, p. 138

3. ARGUMENTS AGAINST REMOVING THE BAT

36. In this chapter, we evaluate concerns that removing the BAT will have deleterious effects on consumer welfare. At the heart of Ofgem's minded-to position to remove the BAT on the 1st October 2024, is a view that the BAT is reducing opportunities for switching by reducing the variety of tariffs available to consumers. In this section we explain that:

- Acquisition-only tariffs have an increased risk of introducing damaging forms of competition;
- This risk is not mitigated by the Default Tariff Cap – it is not an either-or choice; and
- The lack of external switching currently is as much a feature of the level of cap as related to the forward market.

3.1. Acquisition-only tariffs increase the risk of damaging forms of competition

37. Acquisition-only tariffs encourage switching based only on a price differential to tariffs available to existing customers amongst suppliers. We consider this, however, to be a damaging form of competition as it:

- Is not driving competition around tariffs which differentiate on cost to serve, product and service; and
- It imposes negative externalities on customer classes with a higher propensity to be vulnerable.

3.1.1. Wrong kind of competition

38. A healthy and effective market ought to be one predicated around competition driven by different business models with differing costs to serve, differentiated products and/or service levels.

39. Instead, acquisition-only tariffs are a sleight of hand. A company with a substantive number of loyal sticky customers can defend market share against new entrants through deep discounting in the knowledge it can recover lost margins in the longer term and/or through cross subsidy. This advantage is not available to new entrants. Competition through efficiency measures is also time consuming and can be incremental over time. Such strategies can be overwhelmed by deep discounting in acquisition-only tariffs.

40. In the short run, acquisition-only tariffs might give the impression of increasing customer choice. However, as noted in Chapter 2, Ofgem itself has previously noted that variety of tariffs is not itself a sufficient condition for effective competition. We think, in the longer term, that acquisition-only tariffs act to preserve the current status quo rather than undermine it.

41. Ofgem also argues that with the BAT in place, suppliers have resorted to offering retention tariffs – tariffs available to existing customers only, in essence rewarding loyalty. Ofgem, however, appears to take issue with the existence of such tariffs as not being available to all customers. Specifically, Ofgem argues that such tariffs create:

- transparency issues as “it is harder for a consumer to know if their current deal is uncompetitive if there are less whole-of-market deals available to compare it to”³⁹; and
- “Consumers may find it more difficult to compare a new retention-only deal against alternatives in the market (if, for example, its details are not included in price comparison websites)”.⁴⁰

42. The above logic, in our opinion, may be applied to acquisition-only tariffs just the same. Consider for example, a vulnerable consumer who does not necessarily have access to the technology, or time, it takes to research available deals on the market. This customer would face exactly those exact same issues and face a detriment at the expense of less vulnerable, more tech savvy engaged customers.

3.1.2. Negative externalities disproportionately affecting the most vulnerable

43. Respondents to Ofgem’s consultation on the BAT have raised concerns that this kind of competition will also lead to vulnerable (who tend to be more disengaged) consumers cross-subsidising engaged consumers.⁴¹ This discussion is not dissimilar to previous discussions on price discrimination as described in Section 2.

44. Acquisition-only tariffs have been commercially viable as lost revenues and profit in one customer segment can either be recouped from those consumers over the long-term (if they remain with the supplier) or mitigated by higher margins imposed by cross subsidy from other less price-sensitive consumers.

45. For those switching a discount is available in the short run. The discount may largely be illusory if a customer repays this discount over the longer term in the form of higher existing tariff customers. Secondly, it can impose negative externalities on other customers. This can occur if:

- The acquisition-only tariff is cross subsidised by the level of other customer tariffs, then the acquisition customer is not bearing its full cost to serve in the short run; and
- The acquisition customer continuously switches – i.e., never falls into the situation where it remains with the supplier long enough to face an upward move in prices (by price walking) when the acquisition-only tariff expires – then it does not bear its full cost to serve in the long-run either.

46. As we know from Ofgem’s recent report regarding short term market interventions, vulnerable customers make up a larger share of disengaged customers than engaged

39 Ofgem consultation, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para 3.8., p. 31.

40 Ofgem consultation, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para 3.8., p. 31.

41 EDF Response to Call for Input on the future of the BAT post-March 2024, p. 3; Octopus Response to Call for Input on the future of the BAT post-March 2024, p. 13; Scottish Power Response to Call for Input on the future of the BAT post-March 2024, p. 3; Ofgem decision, ‘Decision on short-term interventions to address risks to consumers from market volatility’, February 2022, para. 2.19, p. 14

customers.⁴² Eliminating the BAT would be equivalent to a regressive “tax”, therefore, on disengaged (and so more vulnerable) customers as it would result in them cross-subsidising more engaged customers through higher tariffs.

47. In its most recent consultation publication regarding the BAT, Ofgem states its view that even with the BAT removed,

*Disengaged consumers could pay the same, even as suppliers offer subsidised deals to incoming consumers.*⁴³

48. Ofgem explains that the removal of the MSC, whose price varied from £20-40 per switch⁴⁴, would reduce the cost of switching and would provide;

*A route for cheaper acquisition tariffs which does not involve penalising existing customers. We therefore believe it possible for suppliers to attract new customers with cheaper deals without necessarily increasing costs for disengaged customers too.*⁴⁵

49. Ofgem considers the cost of the MSC as forming an appropriate part of the counterfactual in which the BAT is removed. This logic is flawed and appears to act as a justification for allowing price discrimination at the expense of vulnerable consumers. In the next Sections, we explain how detriment arises from price discrimination regardless of the existence/removal of the MSC.

3.2. Mitigation from the DTC

50. In mitigation of the above problems, Ofgem argues that “*disengaged customers are also already protected from unjustified tariff rises by the price cap*”.⁴⁶ That is to say, the DTC represents a fair price for disengaged customers and so if it is the case that disengaged customers on SVTs end up paying the DTC then it is still a fair outcome without detriment and should not hold back benefits available to other consumers.

51. If it were the case that no customer incurred detriment at a price equal to the DTC, then there would be no need to encourage any switching at all. Indeed, Ofgem should be happy with an outcome where all retail energy customers are priced at the cap. It is clearly not as it continues to investigate ways to encourage switching.

52. This means there is value achievable for consumers below the DTC. We would argue instead that the DTC reduces the risk somewhat from loyalty penalties, but it does not eliminate it as some customers may still be able to better access the lower range of prices available in the market than others.

42 Ofgem, ‘*Decision on short-term interventions to address risks to consumers from market volatility*’, February 2022, para. 3.51, p. 27

43 Ofgem, ‘*Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)*’, May 2024, para. 2.55, para. 3.16, p. 44.

44 Ofgem, ‘*Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)*’, May 2024, para. 2.55, para. 3.15, p. 44.

45 Ofgem, ‘*Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)*’, May 2024, para. 2.55, para. 3.16, p. 44.

46 Ofgem, ‘*Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)*’, May 2024, para. 2.55, para. 2.38, p. 23

53. The fact that competition should be able to exist, below the cap, was recognised at the time the DTC was created. Ofgem notes:⁴⁷

Notwithstanding the fact that certain – relatively inefficient – suppliers may face more challenges once SVT prices reduce, our analysis suggests that a range of different types of supplier will be able to compete for customers effectively.

54. The DTC provides a ceiling price for SVTs, but it is not the lowest efficient price possible. Ofgem recognises, in practice, that:⁴⁸

An efficient level of costs will also differ between suppliers, due to differences in their customer bases and operating environment. Setting an efficient benchmark needs to be based on an examination, looking across the whole market and not picking one specific operator as being perfectly representative of an “efficient benchmark.”

55. Therefore, when suppliers are able to be operate more efficiently than set out under the DTC, they are able to charge tariffs below the level of the DTC – from which consumers benefit.
56. Any behaviour that artificially results in SVTs (or other tariffs) remaining closer to or at the DTC should be considered as a detriment to those consumers on the SVT. The only mitigation is that without the DTC the behaviour might result in a price higher than the DTC. The detriment to consumers is the lost opportunity for SVTs to have been priced further below the DTC than they were.
57. Removing the BAT is an acquiescence of the idea that it is acceptable to create savings for one class of engaged consumers at the expense of disengaged (and frequently more vulnerable) customers.

3.3. The recent lack of switching is not driven by the BAT

58. Ofgem, in its written statement on the future of the BAT, concluded that:

*we do not see evidence that previously disengaged customers are more likely to switch with the BAT now in place [...] This result suggests that BAT is having a limited impact on addressing the loyalty penalty in terms of consumer behaviour.*⁴⁹

3.3.1. The BAT is not intended to promote switching in its own right

59. The BAT is a measure that protects against loyalty penalties. It is not a tool to promote switching – not least external switching. However, it seems Ofgem has been assessing the potential benefits from the BAT from its ability to help external switching recover from the last two years of shock in the market. This is the wrong premise. The BAT prevents a form of competition which is damaging to consumer welfare (which other things being equal would mean a reduction in switching). It eliminates the potential for negative externalities to arise for disengaged customers. It does not provide an incentive for them to switch. Furthermore, it would be surprising if the BAT had incentivised disengaged consumers to

⁴⁷ Statutory consultation, Default tariff cap – Overview document, p. 7

⁴⁸ Ofgem website, ‘Energy price cap (default tariff) policy’

⁴⁹ Ofgem, ‘Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs (“BAT”)’, May 2024, para. 2.40, p. 24.

switch externally when it is implemented for the opposite reason, to disincentivise external switching.

60. A more appropriate question is whether other circumstances in the market are reducing price competition and so dulling incentives to switch to the extent they exist for customers (which we discuss in Sections 3.3.2 and 3.3.3)

3.3.2. Recent market history is influencing switching behaviour

61. The 2021-22 period of market turmoil is only recently past. It is not apparent how it is possible to make much substantive judgement about switching behaviour when the period of consideration was one in which consumers have been explicitly advised to stop switching⁵⁰ and/or have been through a SOLR process where they have been involuntarily switched. The BAT was introduced during 2022 and has existed alongside the MSC. This was intended to reduce suppliers' ability to engage in price competition during the energy crisis. Even if customers had been inclined to switch they faced a paucity of options to do so.

62. Consumer research undertaken by Ofgem during 2022 confirms the impact of the market turmoil and regulatory interventions. It found:⁵¹

Many Panellists were aware of a lack of options available for switching supplier and available tariffs, and had heard that they should not switch at the moment. If they did consider switching, price seemed to be the biggest determinant, although many Panellists said they would prefer a larger supplier because these seemed less likely to go out of business...

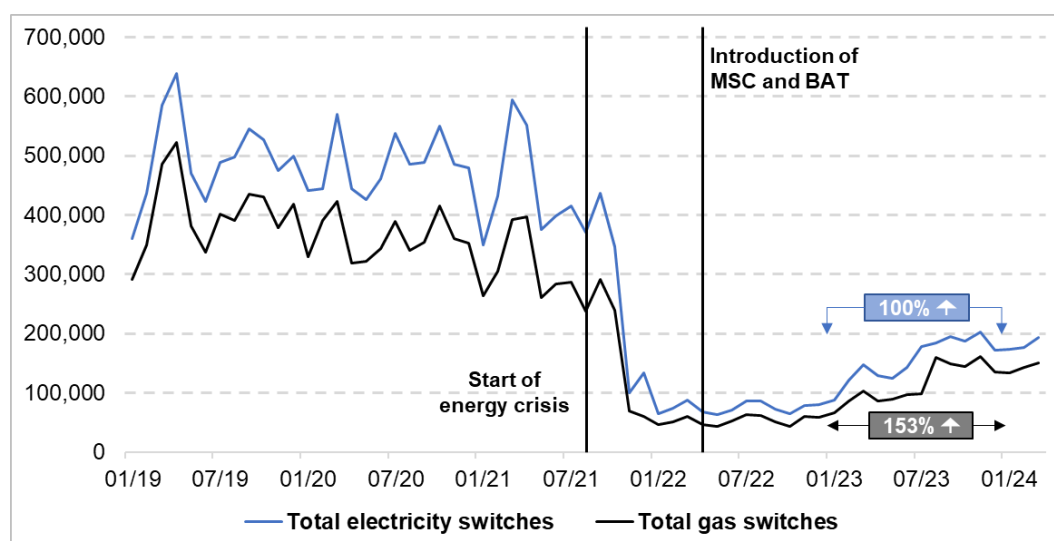
"We were planning on switching but saw Martin Lewis saying 'don't switch', and got an email from our company asking us to wait... with prices going up and things being a bit unstable, we thought it was better to wait and let things stabilise. P, Barnsley" ...

Panellists aren't currently switching supplier because they have been told not to and they feel there are no options.

63. As shown in the chart below, switching generally ceased primarily because suppliers were no longer able to offer fixed price tariffs below the cap (given the rapidly increasing wholesale price and set hedging behaviour assumed in the cap) and consumers absorbed the impact of the market turmoil and reacted to market changes designed to reduce switching.

⁵⁰ For example, see the Mayor of London at [https://www.london.gov.uk/city-hall-blog/rising-energy-prices-latest-advice#:~:text=Don't%20switch%20\(for%20now,eve%20out%20as%20prices%20change](https://www.london.gov.uk/city-hall-blog/rising-energy-prices-latest-advice#:~:text=Don't%20switch%20(for%20now,eve%20out%20as%20prices%20change). (Accessed 3rd May 2024).

⁵¹ Consumer attitudes towards the current energy market and price cap, CRA emphasis added, p.8, p.17, and p.32.

Figure 1: Switching over time⁵²

64. Fixed price tariffs have only recently begun to be offered (from around July 2023). Again, this means that consumers really have not had much time to re-adjust to engaging with competitive offers. Even so some limited increase in switching over 2023 was observed. Switching for both power and gas has doubled over the course of last year. This has occurred in spite of the market situation.

Lack of good reference data

65. The 2022-2023 history of switching is, therefore, somewhat tainted as a source of useful information for the standalone impact of the BAT. Furthermore, it is not particularly good information for assessing how the BAT is affecting customers in a more stable market environment.
66. Ofgem will be able to gather information on the BAT's impact over the course of this year. It seems, however, premature to conclude the BAT should expire as the evidence cannot yet exist.

3.3.3. There is evidence that consumer engagement may now be rising again

67. It is not clear that Ofgem is considering the full picture when coming to this conclusion on the basis of the Customer Impacts of the Market Survey only.
68. In fact, in the recent November 2023 Customer Impacts of the Market Survey report, Ofgem highlighted that looking forward, switching attitudes are predicted to be more positive than at the end of 2022 with "intentions to compare, switch with a current supplier, and switch with a new supplier all increasing".⁵³ Ofgem also highlighted in the report that "openness to switching to save money is also at its highest levels since tracking began"⁵⁴; this further indicates that consumers are increasingly being made aware of the benefits to switching,

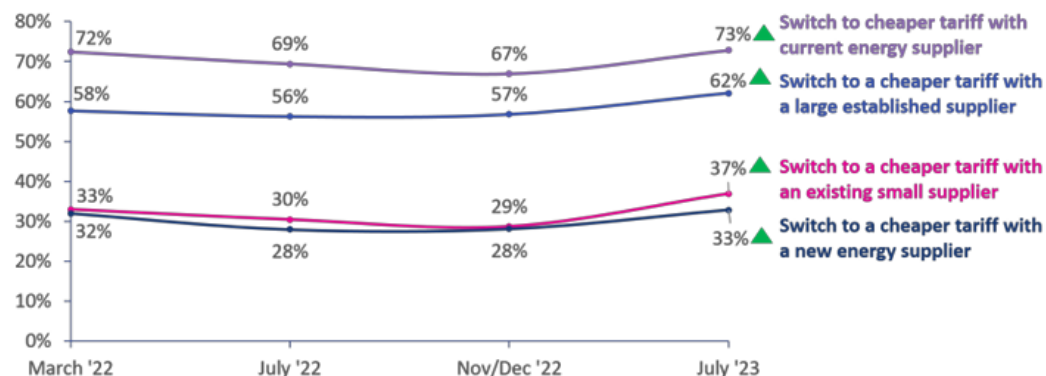
⁵² Ofgem retail market indicators

⁵³ Ofgem report, 'Consumer Impacts of Market Conditions Survey', November 2023, p. 52.

⁵⁴ Ofgem report, 'Consumer Impacts of Market Conditions Survey', November 2023, p. 52.

and are incentivised to do so, regardless of the presence of acquisition-only tariffs. This is illustrated in the figure below.

Figure 2: Likelihood of switching in the next three months if consumers find out they could save money by moving to a new energy tariff over time⁵⁵



69. Finally, and notwithstanding the above, Ofgem has had a large focus on switching as a measure of effective competition. Switching, in this case, means external switching – the change of suppliers by consumers. This measure ignores the significant movement by consumers within suppliers.
70. Ofgem stopped collecting data on internal switching in 2019. However, data collected up to that date shows that internal switching – which indicates customer engagement by choosing to move tariffs, was also twice as high as external switching.
71. In the chart above, we can also observe that survey respondents have been similarly likely to switch internally as they are externally. Missing internal switching data from consideration, therefore, is quite problematic when drawing conclusions on customer attitudes towards switching in light of the BAT. Further, this lack of data means it is not possible to conclude that customers are not paying any more under the BAT than they would be otherwise, as Ofgem have done.

3.3.4. Market circumstances have reduced the ability to offer fixed tariffs below the cap

72. To a large extent, the ability to offer fixed tariffs in competition to SVTs at the DTC depends on the expected trajectory of the price cap and the level of the forward curve. The move to the quarterly DTC also means that the DTC more quickly adapts to changes in the underlying wholesale market.
73. Whilst at any point in time, a supplier might observe a forward curve upon which it can hedge a fixed price offer which is cheaper than the currently expected DTC there is now greater risk in that assumption.
74. Firstly, as noted by Octopus:⁵⁶

⁵⁵ Ofgem report, 'Consumer Impacts of Market Conditions Survey', November 2023, p. 52.

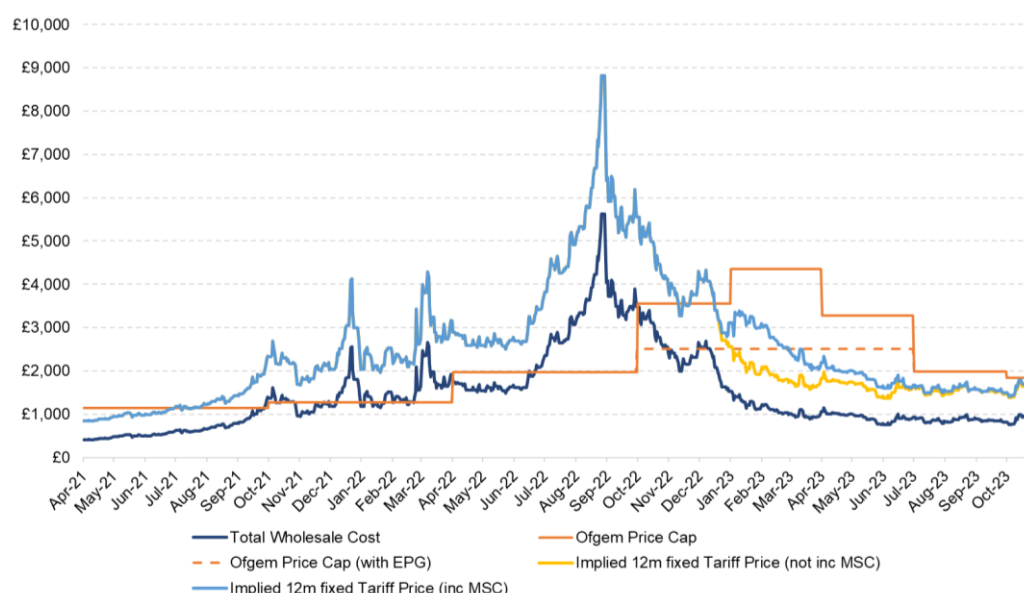
⁵⁶ <https://www.ofgem.gov.uk/sites/default/files/2024-03/Octopus%20Energy%20response%20%28redacted%29.pdf>, p.2

Although more stable than a year ago there is still significant volatility within the market, with prices to hedge an average 12m fixed tariff shifting as much as 25% or £250 week to week.

75. Secondly, even if a supplier is able to lock in a hedge it must factor in the risk that market conditions subsequently change and are ultimately reflected in the DTC during the period of the fixed price contract, making an SVT priced at or near the cap more attractive than the price afforded by the fixed price contract. In a volatile and downward moving market as which was experienced during 2023, suppliers offering a fixed price contract would have needed to accommodate the risk that customers on those contracts might want to switch back to the SVT. This would leave the supplier with a risk of loss on its forward hedges. To compensate the price offered would need to charge a premium to reflect that risk. With greater volatility that premium would be higher. This premium would be observed in either the tariff or in the existence of exit fees.

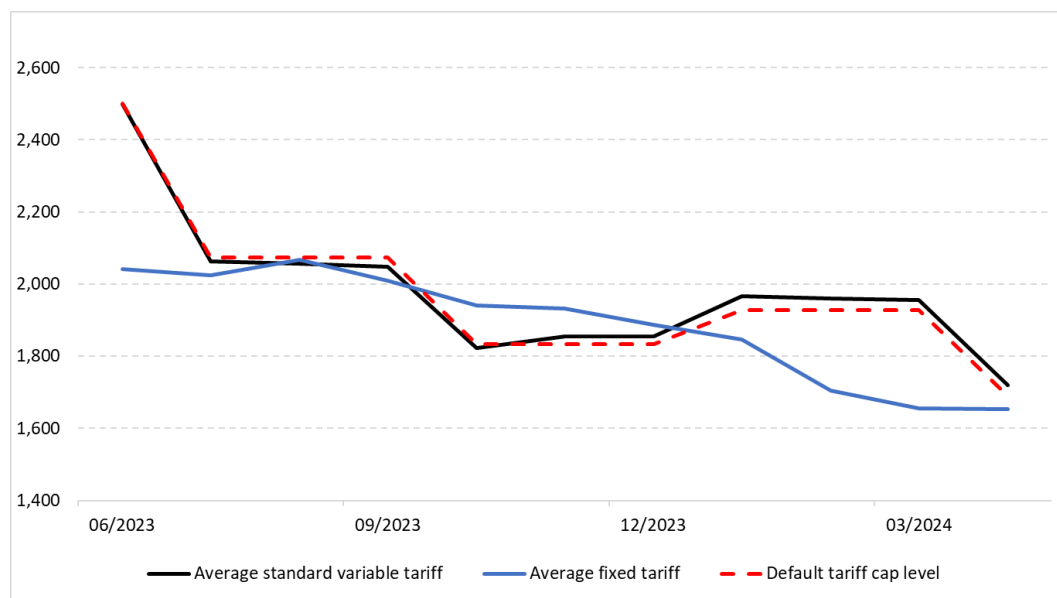
76. This can be seen in the chart below:

Figure 3: Annualised Forward Cost of Energy (implied fixed tariff pricing)



77. The chart above shows that until the spring of 2023 an implied 12-month fixed price contract could be offered (before taking into account MSC or any risk premia being added). Even then, as the chart below illustrates, average fixed tariffs have not been routinely the cheapest option for consumers. This is confirmed by the chart below which illustrates the difficulty of offering fixed tariffs which are competitive to the SVTs.

Figure 4: DTC, standard variable tariffs and fixed tariffs since July 2023



78. We conclude, therefore, that Ofgem is taking what is in our view, a strong decision without data being available, to let the BAT expire instead of using a period of time over which to assess the BAT on its own in current market conditions.
79. Instead, we would argue that Ofgem might avail itself of the forthcoming period to more properly assess the impact of the BAT before reaching a minded-to decision.

4. ECONOMICS OF PRICE DISCRIMINATION

81. In the previous chapters, we have explained that limiting price discrimination has been a primary goal of the BAT, which Ofgem has acknowledged. In this chapter we review the underlying economic theory behind price discrimination and explain why, as a profit maximisation strategy, it is likely detrimental to consumers – specifically those who are identified by firms as being less likely to switch. Furthermore, unless controlled it can become the dominant pricing strategy.
82. We also work through a stylised example that illustrates the quantitative impact of removing the BAT and allowing suppliers to offer tariffs to new customers only. We specifically analyse the impact to consumers that are unable or unwilling to regularly switch. The analysis supports the theoretical and qualitative arguments for making the BAT a permanent market feature to protect consumers against the practice of price discrimination, specifically those least engaged who are also most likely to be most vulnerable.⁵⁷
83. In taking its minded-to position, we note that Ofgem did not consider price discrimination as part of its impact assessment. It states:

We do not explicitly consider whether suppliers would raise the prices on tariffs offered to existing customers to cross-subsidise any losses on newly acquired customers through acquisition tariffs.⁵⁸

4.1. Definitions of price discrimination

84. There are three forms of price discrimination typically discussed in economic theory.
- **First degree price discrimination:** Firms can charge exactly the amount the customers are willing to pay (e.g., online auctions like eBay);
 - **Second degree price discrimination:** Firms can charge different prices for depending on the choices of customers (e.g., through offering bulk discounts, surge pricing, loyalty cards); and
 - **Third degree price discrimination:** Firms sells the same product to different consumers at different prices, depending on the characteristics of those different customers.
85. Acquisition-only tariffs can mainly be considered a form of third-degree price discrimination. This is the kind of price discrimination which has previously concerned Ofgem. It defined price discrimination as a situation where:

A supplier of a good or service is able to charge some consumers a higher price than others for a 'similar' good or service, where the price difference is not related to differences in costs of serving those consumers.⁵⁹

⁵⁷ Ofgem decision, 'Decision on short-term interventions to address risks to consumers from market volatility', February 2022, para. 2.19, p. 14

⁵⁸ Ofgem, 'Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs ("BAT")', May 2024, para. 2.55, Appendix 3, p. 46.

⁵⁹ Based on the Office of Fair Trading "Market Definition: Understanding Competition Law", December 2004, and others including Stole, "Price Discrimination and Imperfect Competition", 2003 and Armstrong, "Recent Developments in the Economic of Price Discrimination", University College London, 2006.

4.2. Third degree price discrimination

86. This kind of price discrimination requires three conditions to be met to be able to occur. These are:⁶⁰

Firms must have an element of market power: without an element of market power in at least one of the market segments, firms are unable to increase price above marginal cost so therefore are not able to price discriminate.

Firms must be able to identify consumers or consumer groups with different price elasticities: consumers must have different degrees of willingness to pay in order for a firm to charge different prices to them. The degree of price discrimination depends on the method by which firms are able to differentiate between consumers. Different price elasticities among consumers may reflect consumer preferences or variation in market characteristics.

Consumers must not be able to trade with others who have paid a different price (arbitrage): this prevents one market price prevailing and therefore allows a firm to sustain two or more different prices.

87. As described in Chapters 2 and 3, these conditions are met in the GB retail energy market. In particular:

- The existence of disengaged customers, who do not respond to price signals, imparts on their suppliers some degree of pricing power which is akin to having market power. That is not to say suppliers are monopolistic but that they face less pricing pressure than under conditions of full competition with fully engaged customers;
- Such disengaged customers are easy to identify for most utilities; and
- Peer-to-peer energy retail sales are not possible.

4.2.1. Incentives to discriminate

88. The practice is a means to a commercial end, as Ofgem has previously recognised:⁶¹

the motivation for firms to engage in price discrimination in this setting is higher margins.

89. Otherwise, it would not occur (in the long run). We illustrate this with a simplified example shown in the chart below.

90. Firms with some market power set their price such that the marginal revenue of its last customer is equal to the marginal cost of that customer. (In this example we have assumed that the marginal cost for all customers is the same). If we assume, again simplistically, that the firm can segment its customers into two types (disengaged and engaged) then it can follow the following strategy:

- Set price P_1 for Q_1 disengaged customers. For this quantity of sales, it receives a profit of $(P_1 * Q_1) - (MC * Q_1)$, equal to the blue box A in the left-hand panel of the chart below.

⁶⁰ Addressing undue discrimination, Impact Assessment, Ofgem, April 2009, p. 15.

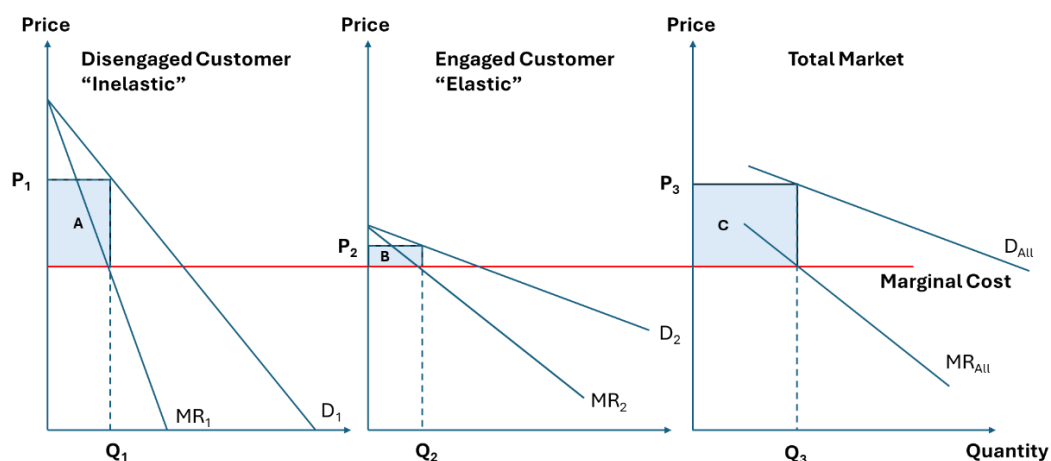
⁶¹ Addressing undue discrimination, Ofgem, 15 April 2009, para. 5.11., p. 16.

- Set price P_2 for Q_2 engaged customers. For this quantity of sales, it receives a profit of $(P_2 * Q_2) - (MC * Q_2)$, equal to the blue box B in the centre panel of the chart below.

91. As a result, it would receive a total profit of $A+B$.

92. Alternatively, it could choose not price discriminate. Instead, it could set a single price P_3 for Q_3 customers (noting Q_3 does not necessarily equal $Q_1 + Q_2$). In return it receives a profit of $(P_3 * Q_3) - (MC * Q_3)$, equal to the blue box C in the right-hand panel of the chart below.

Figure 5: Simplified Price Discrimination Example



93. The choice, therefore, as to whether to price discriminate will depend on if profit from discrimination is greater than with uniform pricing (in the example above). This theoretical framework provides additional insight. Two factors contribute to increasing the likelihood that discrimination will be profitable:

- Disengaged customers must be sufficiently insensitive (or inelastic) to price changes such that their level of demand will fall by sufficiently little to permit an increase in revenue in response to a price increase; and
- Disengaged customers sufficient in volume of demand such that the increase in revenue from a price increase compensates for any losses/reduced margins for discounted customers.

94. For example, a firm which can identify disengaged customers may not discriminate if their disengaged share of demand is small as it will be more difficult to compensate for discounts elsewhere with higher prices on them. A firm where the disengaged customers have higher elasticity of demand may not price discriminate as customer volumes would decrease too much in response to higher prices (as a result of cross subsidizing the engaged customers).

95. This points to a greater risk of price discrimination occurring in firms with larger market share and/or larger shares of SVT customers within their overall customer books and where those customers have particularly sticky customers.

96. These preconditions do seem to be in place in the GB energy market. This has been the case for some time, as noted in Chapter 2. It also remains the case. As Ofgem recently wrote:

Our starting premise is that, if price protection was removed completely, we would likely see the return to price exploitation of inactive customers, as existed before the cap.⁶²

97. This seems a reasonable proposition that even prior to the energy crisis some 50% of customers were on SVTs and price elasticity of demand for those customers was on the order of 1-2%, which would be considered in most circumstances as very inelastic. Currently, the number of SVT customers as a share of the market is over 80%.

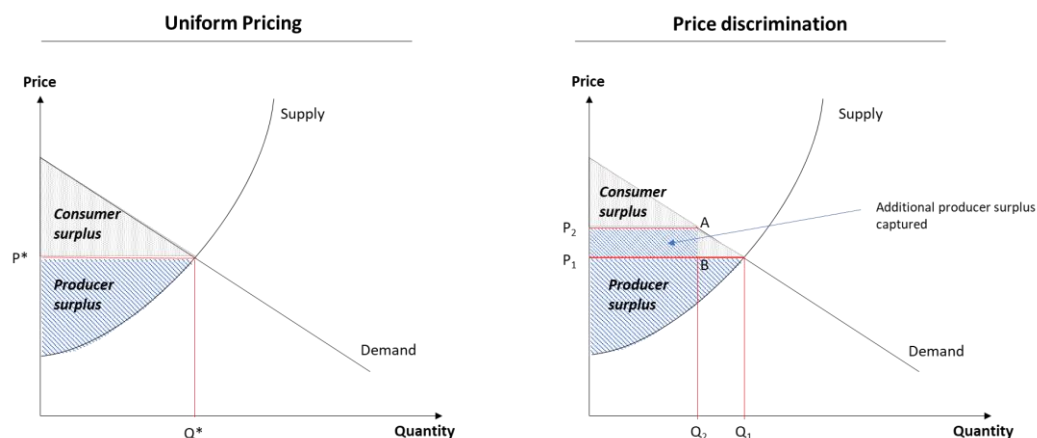
4.2.2. The effects of price discrimination on consumer welfare

98. An increase in profit encouraging price discrimination is an indication of transfer of value from consumers to producers rather than the creation of new value. As the product for engaged and disengaged customers is the same then price discrimination is primarily about redistribution of value between market participants.
99. In the example below we show a stylised comparison of a marketplace in which all consumers are charged the same price for the product. In the left-hand panel below, at the market equilibrium, P^* is the resulting price for Q^* volumes sold.
100. “Consumer Surplus” is defined as “the benefit a consumer gets from consuming that good minus what the consumer paid to buy the good”.⁶³ In Figure 6 below, the demand curve represents the marginal willingness to pay – the maximum value consumers are willing to pay for an additional unit consumed. In the left-hand panel, consumer surplus is equivalent to the grey triangle, representing the summation of the difference between willingness to pay and the price for volumes Q^* .
101. Alternatively, “Producer Surplus” is defined as “the difference between the amount for which a good sells and the minimum amount necessary for the seller to be willing to produce the good”.⁶⁴ The latter is represented by the supply curve – the marginal cost curve. In the left-hand panel, producer surplus is equivalent to the blue triangle, representing the summation of the difference between price for volumes Q^* and the marginal cost of producing those volumes.

⁶² Ofgem 2024, Future of domestic price protection, Para 4.1 p.32

⁶³ Perloff. J., ‘*Microeconomics*’, sixth edition (2011)

⁶⁴ Perloff. J., ‘*Microeconomics*’, sixth edition (2011), p. 304

Figure 6: Impact of discrimination upon consumer surplus

102. The right-hand panel, of the figure above, shows an alternative view of the same market but under conditions of price discrimination. In this instance producers are discriminating between customer types. Here, $(Q_2 - Q_1)$ volumes are priced at P_1 and Q_2 volume is priced at a higher P_2 .
103. This might arise where firms are able to identify one group that has a willingness to pay of P_2 , while the other has a willingness to pay closer to P_1 and the preconditions described in the previous section are in place.
104. In this case, producer surplus is increased relative to the uniform pricing option and consumer surplus is decreased by the amount represented by the area of the rectangle P_1P_2AB .
105. In the example above, we illustrate the extreme outcome of perfect price discrimination in a market on welfare. This situation can only arise in a monopolistic situation. However, market power is measured on a continuum. Even in competitive markets, firms can have some level of market power.
106. Once again, given that the pre-conditions for price discrimination are in place and we believe price discrimination would occur absent some form of price control then absent some product innovation in acquisition-only tariffs, price discrimination will necessarily result in a transfer of consumer surplus to suppliers.

4.2.3. Prisoner's dilemma and acquisition-only tariffs

107. Acquisition-only tariffs can become a dominant form of pricing strategy in that they offer an advantage to suppliers which cannot be achieved with tariffs that must be offered to all customers. In part, this is because consumers respond to the price signal without recognising the externalities created (as discussed in Chapter 3). If pricing remains the primary mode of competition, then an acquisition-only tariff will be competitive relative to a tariff available to all customers. Previously this led to such tariffs becoming dominant.
108. The response of a supplier (offering their tariffs to all customers) to acquisition-only tariffs being offered by other suppliers may (if they wish to maintain or grow customer numbers) be to respond with their own acquisition-only tariff. This is a form of "Prisoners Dilemma".

Its effect has been described by market participants previously. For example, our clients noted in 2021 this effect:⁶⁵

For So Energy, in order to remain competitive and financially sustainable, we have had to reform our pricing principles to adopt these tactics (albeit to a much lesser extent than most). As a result of the changing market environment, with loss making exclusive PCW tariffs dominating the way suppliers price in the market, in June 2020 So Energy reluctantly abandoned its policy of offering the same single fixed rate to new and existing customers (something we had done since being founded). Now, So Energy has a tariff priced more competitively on PCWs, with the rates for loyal customers increased to fund the acquisition of loss-making new customers from PCWs. Despite So Energy having an operating cost per customer around 50% lower than traditional incumbent suppliers, and therefore being at a competitive advantage, our fair pricing model was no longer financially sustainable.

109. This has been noted by others, for example here in 2016:⁶⁶

Prof Catherine Waddams, of Norwich Business School and an expert on energy pricing, expressed surprise at the size of the differences.

"Some companies depend on it much more than others, particularly the big six," she said.

However, it is not just the major suppliers, she added. "Some new entrants to the energy market are playing the same game in the sense that they also have a very high tariff onto which you default if you don't do anything at the end of your first year."

110. As well Octopus noted in evidence to Parliament that:⁶⁷

*At the heart of the energy price rip-off highlighted by the CMA, is the 'tease and squeeze' tactic pioneered by the Big Six, which has now distorted the market so that the dynamic is self-sustaining. It is destructive to consumer trust, and ultimately raises prices for everyone by pitting groups of consumers against each other rather than harnessing competition for the benefit of everyone. **Worse, Tease and Squeeze has moved from the Big 6 to becoming a business model choice for many new entrants**, simply storing up even more problems the longer it is allowed to go on.*

111. Given that acquisition-only tariffs must be a profitable strategy (otherwise they wouldn't be offered) then allowing the BAT to cease raises a strong possibility that price discriminatory acquisition-only tariffs will be re-introduced and come to dominate retail competition again.

4.3. Quantifying the detriment

112. In this section, we work through a stylised example that illustrates the quantitative impact of removing the BAT and allowing suppliers to offer tariffs to new customers only. The purpose of this analysis is not to predict a specific level but to show how a negative detriment arises and what factors might influence its size. As discussed in Chapter 3, we

⁶⁵ How the CMA's relaxation of tariff rules has created a new loyalty penalty through exclusive tariffs on PCWs, So Energy, 2021, p.6.

⁶⁶ BBC News, 9 September 2016. Accessed at <https://www.bbc.co.uk/news/business-37318534>. CRA Emphasis added.

⁶⁷ Written evidence from Octopus Energy (PLS0035), 2017, Accessed at <https://committees.parliament.uk/writtenevidence/84258/pdf/>

consider the detriment to existing consumers from acquisition-only tariffs for new customers only to be the difference in tariff level between what they pay with and without the BAT.

113. Our modelling is, therefore, based around two core scenarios:

- The BAT remains in place and suppliers offer a either an SVT tariff or a fixed price tariff ("**BAT in place scenario**"); and
- The BAT is removed, and suppliers offer SVTs and fixed tariffs to all customers and acquisition-only tariffs to new customers. ("**BAT removed scenario**").

114. As described in following sections, we model a hypothetical profit maximising utility with a mix of customers, some engaged and some disengaged and we consider different pricing situations in relation to the cap.

115. We have drawn on a mix of public data and private information from So Energy to ensure that the pricing assumptions, mix of customer types, and customer behaviours is reasonable given real-world circumstances. The goal of our analysis is not to provide precise guidance on the absolute level of customer detriment, but to illustrate its relative order of magnitude in different circumstances and to consider that detriment in light of the savings some acquisition-only tariff customers might make.

4.3.1. Customer types and numbers

116. We model a hypothetical customer book of 1,000,000 customers. This is in line with Ofgem's approach in setting the DTC where the assumed notionally efficient supplier has around 1 million customers. We have also tested our results for lower and higher customer bases, with no impact on our findings. We assume that this supplier, serves three simplified consumer archetypes:

- **Loyal existing consumers** who are on an SVT tariff (or similar), are brand loyal and largely dormant in their behaviour, i.e., they will typically have been with the supplier for several years or more without changing tariffs. Within this group you would also find statutory and Consumer Vulnerability Strategy (CVS) groups,⁶⁸ commonly referred to as vulnerable consumers.
- **Motivated existing consumers** who exhibit some brand loyalty but are likely to seek a better deal internally. Typically, on a discounted fixed tariff and have remained with the same supplier for several years. These tariffs are also available to new customers.
- **Active switchers** who actively look for a better deal and are willing to regularly (every year) switch suppliers with the main motive being price.

117. For the status-quo scenario, with the BAT in place we have considered two possible splits of the supplier's consumers at the start of the modelled period in line with evidence found published by Ofgem in its latest discussion paper. It set out that "prior to the crisis, around half of households were on the cap (and so on SVTs). It is now around 90% but starting to

⁶⁸ As defined by Ofgem, those with a disability, of pensionable age, of low income and/or residing in rural areas, unemployed, no internet access or single parents

reduce”.⁶⁹ Our model is set up to work under both options of 90/10 split and a 50/50 starting split (which is consistent with the situation prior to the energy crisis).

118. For the scenario where the BAT is removed we assume that each year 50,000 customers (i.e., 5% of the total customer base of 1,000,000) are acquired through an acquisition-only tariff which is assumed to be below fixed price tariffs offered to all existing customers.⁷⁰ This assumption is somewhat arbitrary, and we also model an alternative 10% customer gains within the model to sense check our results against a slightly different assumption. However, a larger number per 100,000 existing customers would give a larger detriment and vice versa. As noted, above, we are not interested in the absolute level of the effect, per se, but rather direction of effect.

4.3.2. Switching probabilities

119. Where available, we have relied on publicly available information on (internal and external) switching behaviour of consumers, as well as on data shared with us by So Energy. Specifically, we have aimed to assess a level of magnitude for consumers’ price elasticity of demand. Using Ofgem published data, we find that a range of 2-8% rate of switching (overall) is reasonable – an assumption we were able to confirm using So Energy’s data. Further, we were able to confirm the rate of external and internal switching rate by relying on information published by Ofgem up until 2019.
120. Using this information, we have therefore modelled a stylised view of consumer flows for a hypothetical supplier given the switching behaviour of each customer type.
121. For our model, we assume switching behaviour is driven principally by price factors. To reflect non-price factors, we assume that irrespective of price differential, a baseline level of each customer type will choose to switch each period. We have based this assumption on the minimum level of switching experienced during the period we have data for.
122. We then assume that as the price differential between the supplier’s tariffs and the average tariff available on the market changes, switching does so proportionally. Specifically, we assume that if the supplier’s tariff is significantly lower than the market, a higher proportion of customers from other suppliers will choose to switch to the supplier – and vice versa.
123. For new customers on an acquisition-only tariff, we assume that as the fixed price contract for existing customers is higher than a majority of those higher engaged customers will leave. We have assumed a baseline of 35% switch away at the end of the first year. We assume 50% move onto a fixed price contract and 15% move onto an SVT. These are arbitrary assumptions (based on discussions with So Energy) which we test with assumptions. We think this is reasonable to test as a sensitivity because part of the success of acquisition is the ability to retain some portion of those customers.

⁶⁹ This confirms our view that Ofgem’s modelling, and analysis is based upon the assumption that all customers on SVTs are charged at the cap. In Section 3 above, we show that this is not true. Nevertheless, we rely on this to test our modelling against different starting customer split points.

⁷⁰ Therefore, in our sensitivity testing the results for a large supplier, we assume each year, the supplier gains 150,000 customers.

4.3.3. Pricing and costs

Pricing

124. Our pricing assumptions are based on historical market prices, as set out in Ofgem's retail market indicators. Specifically, we have estimated the average difference over the years 2019, 2020, 2023, 2024 between:⁷¹
- Standard Variable Tariffs and fixed tariffs;
 - Standard Variable Tariffs and the cheapest tariffs available in the market; and
 - Standard Variable Tariffs and the DTC;⁷²
125. We base the hypothetical supplier's pricing behaviour based on these differentials, at the start of the modelled five periods. We assume that wholesale costs remain the same – and so in effect we are modelling a period of stability in market prices.
126. For SVTs we assume a discount to the DTC of about 2%, derived as half of the differential that existed in the period prior to the energy crisis. This assumption is somewhat arbitrary but is more representative of the current market conditions. Indeed, we recognise that over the past year the market has been readjusting following the crisis and in a falling market, suppliers have been unable to price SVT tariffs significantly differently to the cap. We nevertheless test the model in a situation where the supplier's SVT tariff is set at a 4% discount, in line with the period prior to the energy crisis. We also test the model in a situation where the supplier's SVT tariff is set in line with the cap (i.e., assuming no differential). These sensitivities allow us to explore the effect of acquisition-only tariffs of differing pricing flexibility for SVTs.
127. For fixed tariffs, we follow a similar logic to the SVTs and assume a discount of around 6% relative to SVTs based on half the pre-crisis period differential to average fixed price tariffs from Ofgem. For acquisition-only tariffs, we similarly used data on cheapest reported tariffs from Ofgem.⁷³ In line with our approach for SVTs, we also test the model at tariffs in line with pre crisis tariff differentials.
128. The model captures incoming switchers, outgoing switches and switches between internal tariffs. This is based on data provided to us by So Energy.

Cost to supply

129. Secondly, we analyse Ofgem's view of suppliers' direct and indirect costs (based on the price cap allowance published by Ofgem). Using this information, we estimate the direct costs to the supplier bake in a reasonable gross margin into the supplier's profitability analysis.⁷⁴ These costs remain constant for all periods. For simplicity, we assume that all costs and revenues are incurred and collected during the period in question. We also do not include incremental costs incurred by suppliers to engage with PCWs on acquisition-

71 We do not account for the years 2021 and 2022 as a review of the data show that these two years exhibit the most abnormal patterns, relative to stable times.

72 We note that, while the DTC allowance for quarter 2 of 2024 has been released, as the data for charged SVTs, fixed tariffs, and cheapest tariffs has not yet been published by Ofgem, we base our analysis on information published up to 28th March 2024.

73 Ofgem retail market indicators, retail price comparison.

74 See Costs included in energy price cap as published on Ofgem's website for the period January to March 2024.

only tariffs, as we focus on direct costs only. This assumption is likely to lead to a conservative estimate of the detriment.

4.3.4. Optimisation logic

130. Therefore, everything else constant, the supplier loses profit margins by engaging in the practice of offering acquisition-only tariffs, were it not to cross-subsidise and recoup those elsewhere. Our model is based on the assumption that a supplier which offers an acquisition-only tariff must maintain its gross margin whilst doing so. We have chosen to optimise for gross margin, due to the dynamic nature of switching behaviour in our model. Indeed, in the BAT removed scenario, with the introduction of lower prices acquisition-only tariffs, the modelled supplier gains customer numbers (through increased switching) over the modelled period. Therefore, the supplier's profit over the period increases relative to the BAT in place scenario. However, with acquisition-only tariffs offering much lower margin than other offered tariffs, the suppliers' gross margin decreases in the BAT removed scenario. Under the current market environment, we do not believe it reasonable to assume suppliers have the ability to forgo margins.
131. We do not, in the model, allow for price walking, and so we assume that the gross margin must be restored in each period.
132. Our model calculates a gross margin for the customer book in the status-quo scenario where the BAT remains in case. The model then follows the following steps for the situation where BAT is removed:
- Raises SVT tariffs until gross margin for each period is restored. If gross margin is restored, the model stops. The SVT tariff is capped at the level of the price cap.
 - If the gross margin is not restored (for example if the SVT tariff has reached the price cap), the model raises the prices of the fixed price contracts until the gross margin is restored. We note that suppliers' ability to do this is specifically high in a falling market (and as shown in Figure 4 fixed tariffs are currently being offered below the level of the DTC), this being the assumption Ofgem chose for its own modelling. Fixed price tariffs are also not allowed to exceed the cap. (Although it is permissible to exceed the DTC with a fixed tariff, we assume it would be illogical for any consumers to remain on these tariffs were it to do so.)
133. This optimisation logically follows from SVT customers being more price inelastic than fixed price contract customers. It means that SVT customers increase revenue by a greater amount for each £1 increase in annual tariff.
134. We model the supplier's performance over five years. This is because we are interested in whether switching implications from the increase in prices affect outcomes for the detriment value. We also can allow for the loss in margin to take more than one year to be re-established which is a reasonable sensitivity on company strategies.

4.3.5. Calculation of detriment values

135. Customer detriment is calculated as the difference in SVT and Fixed Price contracts on average over the five periods between the optimised BAT removed scenario and the BAT in place scenario.

4.3.6. Model results

136. The model results confirm the economic theory set out in Section 4.2. Price discrimination results in lower tariffs for engaged customers but if the strategy is intended to be profit margin maximising, then suppliers will increase the tariffs of SVT and other existing customers. Below, we present our findings. We note that as described above, we have optimised the supplier's performance on the basis of gross margins to enable us to model a simple stylised situation. We note that this approach is likely conservative as it only accounts for direct costs. Were we to account for the differences in the cost-to-serve of different consumers, specifically the cost to suppliers of offering PCW exclusive tariffs in a BAT removed scenario (which we understand to be of the order of £70, or more, from So Energy), our results would likely be higher.
137. In Table 1, we show the outcome for a scenario in which prior to the elimination of the BAT SVTs were priced at a 2% discount to the cap.

Table 1: £/Customer Year Detriment – SVTs priced under the cap (2% discount)

| Customer split → Average Customer Detriment ↓ | Customer split → | |
|---|---|---|
| | 90% of customers on SVTs 10% on non-SVTs | 50% of customers on SVTs 50% on non-SVTs |
| Fixed Price Increase | 0 | 0 |
| SVT Increase | 12 | 15 |

138. In this scenario:
- SVT and fixed tariffs rise to restore the supplier margin;
 - SVT tariffs rise by a greater amount than fixed tariffs and that the level of that increase depends on the relative number of SVT customers in the overall customer book; and
 - SVT tariffs rise towards the level of the cap in both sensitivities.
139. In Table 2, we show the result of a sensitivity where SVTs are already priced at the cap.

Table 2: £/Customer Year Detriment – SVTs priced at the cap

| Customer split → Average Customer Detriment ↓ | Customer split → | |
|---|---|---|
| | 90% of customers on SVTs 10% on non-SVTs | 50% of customers on SVTs 50% on non-SVTs |
| Fixed Price Detriment | 64 | 13 |
| SVT Detriment | 0 | 0 |

140. In the 90/10 scenario, where SVTs price at the cap, given the low number of customers on fixed tariffs to recover lost margins from, the detriment on those customers is much higher. In the 50/50 scenario, with greater fixed contract customer numbers, fixed price customers bear the full cost of the acquisition-only tariffs but to a lesser degree.

141. The combination of these two scenarios confirms our view that the costs of acquisition-only tariffs will primarily be borne by SVT customers because of their relative stickiness. Fixed price contract prices rise only once pricing flexibility of the SVTs is exhausted. Removing the BAT in an environment where SVTs and/or fixed price contracts are close to the cap (as is the case today) will at best result in SVTs and fixed price contracts being priced at the cap.
142. The table below provides a sensitivity on the assumption of the number of customers acquired through the acquisition-only tariff. In this sensitivity we double the baseline assumption to 10%.

Table 3: £/Customer Year Detriment – SVTs priced under the cap at 2% discount (higher acquisition customer gain)

| Average Customer Detriment ↓ | Customer split → | |
|---------------------------------|---|---|
| | 90% of customers on SVTs 10% on non-SVTs | 50% of customers on SVTs 50% on non-SVTs |
| Fixed Price Detriment | 1 | 1 |
| SVT Detriment | 24 | 28 |

143. This sensitivity illustrates a further point, the more successful the growth strategy is for acquisition customers relative to the existing customer base, the greater the detriment to existing customers who must bear higher tariffs.
144. Finally, we show the impact of a sensitivity on the tariff differentials. As mentioned above, we have modelled a base case with tariff differentials half those found in Ofgem's pre-crisis data. In the table below, we show the impact on the results of modelling tariffs differentials in line with Ofgem's historical data.

Table 4: £/Customer Year Detriment – SVTs priced under the cap (differential in line with Ofgem historical data)

| Average Customer Detriment ↓ | Customer split → | |
|---------------------------------|---|---|
| | 90% of customers on SVTs 10% on non-SVTs | 50% of customers on SVTs 50% on non-SVTs |
| Fixed Price Detriment | 0 | 0 |
| SVT Detriment | 25 | 31 |

145. We find that the detriment on SVT customers increases under this assumption. This is in line with expectations – with higher differentials, including between the DTC and acquisition-only tariffs, sticky SVT consumers are required to fund a larger differential.
146. Finally, we note that under this sensitivity, under the assumption of SVTs priced at the cap, and a 90% - 10% split of customers, the detriment rises to £74/customer.

4.3.7. Cost benefit analysis

147. As mentioned above, where price discrimination is successfully implemented by a firm, it will retain constant, or increase, its profits by identifying different customer groups and capturing part of the consumer surplus.

Table 5: illustration of price discrimination as a strategy by a profit maximising firm

| | Producer surplus | Consumer surplus (engaged) | Consumer surplus (loyal/sticky) |
|----------|------------------|-------------------------------|------------------------------------|
| Option 1 | Up | Up | Down |
| Option 2 | Constant | Up | Down |
| Option 3 | Down | Up | ? |

148. Profit maximising firms engaging in price discrimination will therefore recoup profit from one group to another – unless they would be willing to lose out on profits from this strategy.
149. As set out in Section 4.2 above, it would be unsurprising therefore to find a somewhat offsetting effect of price discrimination on engaged consumers relative to sticky consumers. However, it also undermines the use of such a method – as it measures the costs and benefits of different consumers against each other. Finally, any impact analysis needs to account for the following:
- Completeness. The analysis would need to consider all costs to consumers, including the costs to those engaged customers, of indeed engaging with the market and searching for better offers which has been found in other industries to be as high as £18-20 per customer.⁷⁵
 - Weighting. As set out in Ofgem’s impact assessment guidance, where possible Ofgem set out to “calculate the knock-on impact on disposable income” of “average energy bill impact of a policy in £”. As set out above, vulnerable customers are most likely to be on SVTs and to be least engaged. Therefore, any detriment to those customers should be assessed against the likely socio-economic characteristics of those customers.⁷⁶
150. Our analysis is not designed to account for operating costs, including the cost to suppliers and customers of using PCWs. Therefore, were we to extent our analysis, the benefit to acquisition customers would be reduced by their search costs and any increase in costs to suppliers would translate into either i) a higher loyalty penalty or ii) lower discounts to engaged customers. Our analysis instead focuses on the direct negative consumer detriment that would result from price discrimination, specifically to those more vulnerable consumers. Any benefit to engaged customers would be largely funded from this detriment: “Robbing Peter to pay Paul”.

⁷⁵ General insurance pricing practices Interim Report, para 5.32., p. 32.

⁷⁶ Ofgem impact assessment guidance

5. APPENDIX

5.1.1. Summary

151. In this Appendix, we set out some experience with other industries in which the impact of acquisition-only tariffs has been considered by regulators.

5.1.2. Insurance

152. In 2021 the Financial Conduct Authority (FCA) published its general insurance pricing practices market study and subsequent rules to protect consumers against “complex and opaque pricing techniques” whereby firms:⁷⁷

identify customers who are more likely to renew with them. Firms then increase prices for these customers each year at renewal, in a process known as ‘price walking’. This results in some customers paying high prices relative to their cost to serve.

153. The new rules were instated to prevent loyal and disengaged consumers from paying significantly more than new consumers joining firms on acquisition-only tariffs. The General Insurance Pricing Practices (GIPP) were introduced on 1st January 2022, requiring prices offered to existing consumers to be consistent with those offered to new consumers, “a firm must not set a renewal price that is higher than the equivalent new business price”.⁷⁸ The rules were also accompanied by the need for a spokesperson within each insurance firm to attest annually that their firm was compliant with the updates.⁷⁹

154. The well-known consumer website, MoneySavingExpert, also publicised this rule change. Whilst founder Martin Lewis’ stance is “what’s the best way to save money?”, he did highlight this rule change and stated that it marked “the end of the loyalty premium. The end of price walking – the fact that if you automatically renew your insurance they will walk up the price year after year”.⁸⁰

155. Every quarter, the Chartered Insurance Institute (CII) runs surveys with consumers and SMEs, as it relates to their experience in the insurance sector. As part of this survey, market participants are asked about loyalty, with a particular focus on loyalty rewards. They ask:

How important are the following statements when it comes to insurance providers in general:

I got a discount for staying with the same company

My premium doesn’t increase because I’m not a new customer anymore

My provider takes my loyalty into account when calculating renewal quotes after I have claimed

My insurer provides additional benefits for renewing (e.g. enhanced cover)

77 FCA: ‘PS21/11: General insurance pricing practices – amendments’, August 2021

78 FCA: ‘PS21/11: General insurance pricing practices – amendments’, August 2021

79 FCA: ‘ICOBS 6B.2 Application and purpose’, January 2022, para. 6B.2.1

80 Money Saving Expert: ‘The BIG insurance rule change is coming - what you need to know before 1 Jan’, October 2021

My insurer told me what I would have paid if I wasn't a new customer

My provider thanked me for staying with the company

I get rewarded for having multiple products or policies with my insurer

156. This highlights the continued importance of rewarding loyalty as a measure of a successfully working market, rather than on switching and engagement as an arbitrary measure.

5.1.3. Mortgages

157. The Prudential Regulation Authority and Financial Conduct Authority (FCA) issued a joint policy statement in 2019 with an aim of improving how harm to consumers is identified and addressed.⁸¹ This resulted in changes to the reporting requirements of mortgage providers, which in turn would allow regulatory bodies to more easily “identify and address harm to consumers and competition”.⁸²
158. Further, and in the same year, the FCA conducted a market study into how well the mortgage market was working for consumers.⁸³ This resulted in several areas of concern, including unfair prices for long-standing consumers and those who were unable to switch, denoted “mortgage prisoners”, being highlighted as causes for concern by the regulator. The study’s interim report resulted in a round-table meeting with lenders and lender trade bodies which led to a voluntary agreement (completed by lenders in 2019) agreeing to commit lenders to contact “mortgage prisoners” to offer better interest rates.^{84,85}

5.1.4. Mobile

159. In 2019, Ofcom set out actions that aimed to address the “loyalty penalty issue” which were then implemented in February 2020.⁸⁶ These included the imposition of new requirements for mobile providers to send out end-of-contract notifications (ECNs) to consumers which included notices of discounts available to new consumers.⁸⁷ Furthermore, regulation was introduced to require suppliers to provide information to vulnerable out-of-contract consumers regarding their contract and the best deals available (at least annually), known as Annual Best Tariff Notifications (ABTNs).⁸⁸

81 FCA/PRA policy statement: ‘FCA and PRA changes to mortgage reporting requirements’, September 2019

82 FCA/PRA policy statement: ‘FCA and PRA changes to mortgage reporting requirements’, September 2019, p. 5

83 FCA market study: ‘Mortgages market study – Final Report’, March 2019

84 FCA market study: ‘Mortgage market study – Interim Report’, May 2018

85 FCA market study: ‘Mortgages market study – Final Report’, March 2019, p. 33

86 Ofcom statement and consultation: ‘Helping consumers to get better deals in communications markets: mobile handsets’, July 2019

87 Ofcom statement and consultation: ‘Helping consumers to get better deals in communications markets: mobile handsets’, July 2019, p.12

88 Ofcom statement and consultation: ‘Helping consumers to get better deals in communications markets: mobile handsets’, July 2019, p.12

160. The regulation to protect consumers from price discrimination in the mobile industry was deemed urgent by the regulator and implemented “as quickly as possible” so as to prevent detrimental impacts on consumers.⁸⁹
161. Since the introduction of regulation, failure by four of the UK’s biggest mobile companies (EE, Vodafone, Three and O2) to comply has resulted in a class action lawsuit filed against them, claiming detrimental impact on around five-million consumers due to the continuation of loyalty payments.⁹⁰

5.1.5. Broadband

162. In 2020, following a review of pricing practices in fixed broadband, Ofcom worked with major providers covering 90% of the market to assist vulnerable consumers.⁹¹ The report highlighted that vulnerable consumers were paying £3.90 more than the average price across all contract types and therefore required intervention.⁹² The report further noted that those who were vulnerable were least likely to switch and therefore least likely to be “new consumers” as referred to in the report. Ofcom worked with the industry to aid consumers including supplier commitments to reductions of out-of-contract prices paid by vulnerable consumers.⁹³
163. Ofcom have clearly regarded the issue of price differentials and their resulting impact on those most vulnerable to be not only a noticeable cause for concern, but an issue which required intervention and proactive support from suppliers. This instance has parallels with the ongoing situation within the domestic energy situation, and without the BAT or other intervention, the vulnerable consumer groups may continue to cross subsidise the active switchers.

5.1.6. Financial Services

164. The new Consumer Duty introduced by the FCA in 2022 aims to stop pricing practices, such as ‘rip-off charges’ by firms, which are not in the best interest of consumers.⁹⁴ It makes clear that differential pricing is now only authorised if it is ‘fair’ to all consumers. This means that whilst cross-subsidisation is still permitted between existing and new consumers, to meet the new standards of the regulation, a firm must now be able to demonstrate that both consumer groups are receiving ‘fair value’ i.e., the price discrepancy between the groups is not unjustifiably large.⁹⁵
165. The FCA Cash Savings Market Review in 2023 outlined strategies for firms to follow which satisfied the new Consumer Duty regulation, including supporting existing consumers to

89 Ofcom statement and consultation: *‘Helping consumers to get better deals in communications markets: mobile handsets’*, July 2019

90 Bloomberg, *‘UK mobile phone firms face overcharging claims in class-action suit’*, December 2023

91 Ofcom report: *‘Helping consumers gets better deals – Review of pricing practices in fixed broadband’*, July 2020

92 Ofcom report: *‘Helping consumers gets better deals – Review of pricing practices in fixed broadband’*, July 2020, p. 27

93 Ofcom report: *‘Helping consumers gets better deals – Review of pricing practices in fixed broadband’*, July 2020, p. 34

94 FCA policy statement: *‘A new Consumer Duty – Feedback to CP21/36 and final rules’*, July 2022

95 FCA policy statement: *‘A new Consumer Duty – Feedback to CP21/36 and final rules’*, July 2022, ps. 45-46

understand their savings options by encouraging them to review their other available product options to avoid any loyalty penalties.^{96,97}

166. A further impact of the new Consumer Duty is that it restrains the use of 0 interest balance transfers by credit card consumers. This is due to the duty aiming to protect consumers and protect them from any potential harm – highlighting that firms must act to “deliver good outcomes for retail consumers” and “put consumers’ needs first”.⁹⁸ Ultimately, this threatens the future of 0 interest balance transfers as due to the nature of how they are set up and the seemingly limited profits available to firms if used correctly meaning that the main income from these transactions come from consumer inertia and mistakes i.e., failing to make minimum repayments and extended repayment periods lead to higher interest rates and profits for lenders. This means that vulnerable people are disproportionately impacted as they are the most likely to miss payments or not be active switchers i.e., be unaware of the end of the 0-interest period. Principle 7 of the Consumer Duty addresses issues like these and outlines that “a firm must pay due regards to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading” i.e., firms can no longer profiteer from consumers who are unaware of the higher interest rates they are paying due to missing repayments, they must be updated.⁹⁹
167. Regulatory guidance for financial services was also published in 2021 highlighting the threats to vulnerable consumers from firms’ pricing practices and outlined that firms must ensure that vulnerable consumers are protected i.e., vulnerable consumers are contacted to make sure they are on the best deal available.¹⁰⁰
168. Banks are taking action to comply with these tougher rules including Santander who introduced their ‘Easy Access Saver’ and ‘Easy Access ISA’ accounts.¹⁰¹ One of the aims of these accounts is to support vulnerable consumers as the products which were previously only available online, are now accessible in branches and via the phone, this aligns to Ofgem’s view that methods including phone are favoured by vulnerable consumers.¹⁰²

96 FCA report: ‘Cash Savings Market Review 2023’, July 2023

97 FCA report: ‘Cash Savings Market Review 2023’, July 2023, p. 44

98 FCA policy statement: ‘A new Consumer Duty – Feedback to CP21/36 and final rules’, July 2022, p. 3

99 FCA policy statement: ‘A new Consumer Duty – Feedback to CP21/36 and final rules’, July 2022, p.24

100 FCA finalised guidance: ‘Guidance for firms on the fair treatment of vulnerable consumers’, February 2021

101 Santander website: ‘Santander launches best buy easy access savings product and increases ISA rates’, September 2023

102 Ofgem report: ‘Open Letter – Active choice collective switch trial’, September 2019